

ORIGINAL

NEWPORT TRIAL GROUP
 A Professional Corporation
 Scott J. Ferrell, Bar No. 202091
 Roger E. Borg, Bar No. 117765
 Michael E. Velarde, Bar No. 266272
 610 Newport Center Drive, Suite 700
 Newport Beach, CA 92660
 Tel: (949) 706-6464
 Fax: (949) 706-6469

FILED

JUL 2 2010

RICHARD W. WIENERS
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

Attorneys for Plaintiff and the Class

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

FELIPE MORALES, DAN BOBBA and
 CHRIS RHODES, individually, and on
 behalf of all others similarly situated,

Case No. CV10 1601 EDL

Plaintiff,

**FIRST AMENDED CLASS ACTION
 COMPLAINT**

vs.

JURY TRIAL DEMANDED

MAGNA, INC.; STEVE MOIDEL; and
 DOES 1-250, Inclusive,

Defendants.

I. INTRODUCTION

1. Magna-Rx+ is a purported "male enhancement" product manufactured by MAGNA, INC. ("Magna") that is completely worthless. *In fact, Magna's own President has admitted in sworn testimony that most of the advertisements for Magna-Rx+ are blatantly false, and that the "Doctor" who is identified on every bottle of Magna-Rx+ as the inventor of the product and the "Past President of his State Society of Urology" has never been licensed to practice medicine in the United*

1 **States.** A marketing scheme executed by both Magna and affiliate marketers facilitates
 2 this conspiracy to defraud consumers by making outrageous and false claims about the
 3 efficacy of Magna in order to drive sales of the product. Blatantly false claims include
 4 the assertion that Magna-Rx+ causes penis enlargement, and the assertion that any
 5 purported effect of Magna-Rx+ is permanent.

6 2. Magna's own proprietary websites are "anonymously registered" under the
 7 name "Domains By Proxy," a company that allows parties to make false and illegal
 8 claims behind a cloak of anonymity. Some affiliate marketers make, and have made,
 9 false claims on websites that appear to be proprietary to Magna, such as www.magna-
 10 rx.com and www.magnarxpills.com, adding to the deception created by the false
 11 statements on those sites.

12 3. Affiliate Marketers make false claims about Magna-Rx+ that mirror those
 13 originally asserted by Magna itself.

14 4. Both Magna and Affiliate Marketers benefit from the false claims made on
 15 these websites, since they serve to drive sales of Magna-Rx+, a useless product.

16 5. Accordingly, Dan Bobba and Chris Rhodes ("Plaintiffs") bring this lawsuit
 17 to enjoin the ongoing defrauding of thousands of consumers throughout the United
 18 States by Magna and Affiliate Marketers, and to recover the many millions of dollars
 19 taken by this fraudulent practice.

20 **II. THE PARTIES**

21 **A. Plaintiff.**

22 6. Plaintiff Dan Bobba is a citizen of California who resides in this Judicial
 23 District who purchased Magna-Rx+ in the fall of 2009 at Wal-Mart in this Judicial
 24 District.

25 7. Plaintiff Chris Rhodes is a citizen of California who resides in this Judicial
 26 District who purchased Magna-Rx+ in late 2009 in this Judicial District.

27 ///

1 **B. Magna Defendants.**

2 8. Plaintiffs are informed and believe, and upon such information and belief
3 allege, that Defendant Magna RX, Inc. (“Magna”) is a California corporation that does
4 business throughout the United States.

5 9. Plaintiffs are informed and believe, and upon such information and belief
6 allege, that Defendant Steve Moidel (“Moidel”) is an individual and California citizen.

7 **C. Doe Defendants.**

8 10. Plaintiffs do not know the true names or capacities of the persons or
9 entities sued herein as DOES 1 to 250, inclusive, and therefore sue such defendants by
10 such fictitious names. Plaintiffs are informed and believe and thereon allege that each
11 of the DOE defendants is in some manner legally responsible for the damages suffered
12 by Plaintiffs and the members of the class as alleged herein. Plaintiffs will amend this
13 Complaint to set forth the true names and capacities of these defendants when they have
14 been ascertained, along with appropriate charging allegations, as may be necessary.

15 **III. JURISDICTION AND VENUE**

16 11. This Court has jurisdiction over all causes of action asserted herein under
17 the Class Action Fairness Act (“CAFA”) because there exists diversity of citizenship for
18 purposes of CAFA and because the amount in controversy exceeds \$5 million.
19 Specifically, at least one member of the putative class is a citizen of a State different
20 from at least one of the Defendants. Moreover, this Court has federal question
21 jurisdiction under the Federal Racketeer Influenced And Corrupt Organizations statute
22 because that claim is predicated on the racketeering activities of mail fraud and wire
23 fraud, both of which have a strong nexus with interstate commerce, particularly in this
24 case.

25 12. Venue is proper in this Court pursuant to 28 U.S.C. Section 1391 because
26 this is a judicial district in which a substantial part of the events or omissions giving rise
27 to the claims occurred. Specifically, both named plaintiffs live in this Judicial District,
28

1 reviewed and relied on advertisements promulgated in this Judicial District, and
2 purchased the product in this Judicial District.

3 4 **IV. FACTS**

5 13. Magna-Rx+ is a purported "penile enhancement" product. As explained
6 below, blatantly false advertisements created by Magna and mirrored by Affiliate
7 Marketers have erroneously and falsely asserted that Magna-Rx+ will cause penile
8 enlargement and that any purported effect of Magna-Rx+ is permanent.

9 14. Magna President Steve Moidel has testified that Magna does not have, and
10 has never sought, any scientific evidence regarding the efficacy of the Magna-Rx+
11 product.

12 15. Plaintiffs Chris Rhodes and Dan Bobba both purchased Magna-Rx+ in this
13 Judicial District in late 2009 at Wal-Mart. Plaintiffs purchased Magna-Rx+ because
14 they hoped to achieve an increase in penis size, as asserted in advertising for Magna-
15 Rx+. Before purchasing Magna-Rx+, they both read, reviewed, relied upon, and
16 believed the false claims made on www.magnarx.com, as well as Affiliate Marketer
17 website advertising. As noted herein, those advertisements assert that Magna-Rx+ will
18 cause penile enlargement and/or that any purported effect of Magna-Rx+ is permanent.
19 An accurate copy of the www.magnarx.com website, as it appeared in the fall of 2009
20 when Plaintiffs relied on it, is attached as Exhibit 1. Affiliate Marketer advertisements
21 are attached as exhibits below.

22 16. Despite consuming Magna as directed, Plaintiffs did not experience any
23 increase in penis size, thickness, or width. The product was worthless to them.

24 17. Plaintiffs relied on the website www.magnarx.com, which is the
25 proprietary website of Magna, as it appeared in late 2009 (*See* Exhibit 1). At that time
26 the website asserted the following false claims about Magna-Rx+:
27
28

- 1 (a) “In just a few short weeks, you’ll be amazed as you watch your
 2 penis grow into the biggest, thickest, hardest one she’s ever had and
 3 the one she’ll remember forever and ever!” *(Magna’s president*
 4 *admits that this advertising claim is false).*
- 5 (b) Magna-Rx+ is “what many medical experts have called the world’s
 6 most powerful Penis Enhancement Formula.” *(Magna’s president*
 7 *admits that Magna does not have, and has never sought, any*
 8 *scientific evidence regarding the efficacy of the Magna-Rx+*
 9 *product).*
- 10 (c) “The Magna-Rx+ formula is so powerful, so effective, so complete,
 11 we 100% guarantee that you’ll *NEVER* have to purchase any more
 12 than the 60-day supply included in this special offer. We could have
 13 easily made Magna-Rx+ much weaker in order to have you buy
 14 more...Instead, we focus on getting the best results as quickly as
 15 possible. That’s the secret of our success! With the Magna-Rx+
 16 System, you can skyrocket in 60 days or less – with nothing else to
 17 buy ever again.” (emphasis original) *(In reality, Mr. Moidel has*
 18 *testified that no purported effect of Magna-Rx+ is permanent and*
 19 *that the “guarantee” that a user will never need to buy the product*
 20 *“ever again” simply means that a user will not be obligated to*
 21 *make future purchases of Magna-Rx+).*
- 22 (d) “Does a larger penis really matter to a woman? We believe it does.”
- 23 (e) The statement “How Magna-Rx+ Makes You a Bigger, Better Man”
 24 is written adjacent to a diagram of a flaccid penis. This causes the
 25 consumer to believe that Magna-Rx+ has penis enlarging effects,
 26 and that those effects are seen in the flaccid penis. *(Mr. Moidel has*
 27 *testified that Magna-Rx+ has no purported effect on the flaccid*
 28

penis and that, at most, Magna-Rx+ “may” promote blood flow while a user is erect).

- (f) Dr. Aguilar is “the genius behind Magna-Rx+ ... a Board Certified Urologist who has treated over 70,000 patients with erectile problems...a member of both the College of Urology, and the director of 46 urologists. He is also a past president of his State Society of urologists.” *(Aguilar is not licensed to practice medicine in the U.S. He has a small storefront “alternative medicine” clinic in northern Mexico. This is especially material because it is particularly in the use of a doctor’s endorsement that Defendants strive to distinguish their product from others on the market. Furthermore, Mr. Moidel has testified that no current employee or representative of Magna, including Magna President Steve Moidel, has ever spoken to Dr. Aguilar.)*
- (g) “With millions sold over the past two and a half years, Magna-Rx+ is currently the world’s #1 best-selling male supplement.” *(Mr. Moidel testified that Magna has no way of knowing how much male supplement product other companies sell, and that this statement has no basis in overall volume sold. Rather, in support of this statement Mr. Moidel testified that “it is certainly our best selling product”).*

18. The packaging of Magna-Rx+ also makes the same claims regarding Dr. Aguilar, as well as the claim that Magna-Rx+ is “100% EFFECTIVE.” (See Exhibit 2).

19. The advertising and packaging were personally approved and disseminated by Steve Moidel, the managing agent of Magna. Magna and Mr. Moidel knew, throughout the class period, that all of the claims relating to Magna-Rx+ causing penis enlargement and having permanent efficacy were false. Mr. Moidel has testified under

1 oath that Magna-Rx+ does not cause penis enlargement and that Magna-Rx+ does not
2 have any permanent result.

3 20. Mr. Moidel has also testified that any advertisement that claims that
4 Magna-Rx+ causes penile enlargement or has any permanent effect is blatantly false.

5 21. Magna, Mr. Moidel and Affiliate Marketers also knew the claims were
6 false because they were aware of complaints made by consumers regarding the false
7 advertising of Magna-RX+ and, specifically, its inability to provide a permanent
8 increase in penis size. Nevertheless, despite knowing that the claims were false, they
9 continued to disseminate the false claims to Plaintiffs and others in the class to reap an
10 unfair profit.

11 22. Plaintiffs also relied on Affiliate Marketer advertising that makes false
12 claims about the efficacy of Magna. Affiliate Marketers make false claims that closely
13 mirror the false claims made by Magna itself, as outlined above.

14 23. The Affiliate Marketer www.magna-rx.com has a website URL that would
15 lead a consumer to believe that it is a proprietary website of Magna. (Notice that it is
16 identical to Magna's own website, with the addition of a "dash.") In fact, it is the
17 website of a company called NEP Products, Inc., and is therefore an Affiliate Marketer.
18 Plaintiffs relied on claims that were made on that website as recently as March 20,
19 2010, an accurate copy of which are attached hereto as Exhibit 3.

20 24. Mr. Moidel has testified that NEP Products had a licensing agreement with
21 Magna to run the www.magna-rx.com website.

22 25. As recently as March 20, 2010, the www.magna-rx.com website
23 fraudulently claimed that "Magna RX+ will give you a thicker, longer, and much more
24 defined penis. Enlargement averages from 1 to 3 inches. In some cases, it could
25 enlarge up to 5 inches. Your penis will be longer and thicker, even in its flaccid state."
26 That website also invoked the familiar refrain that "(t)he genius behind Magna RX+ is
27 George Aguilar, MD."
28

26. Going from bad to worse, the website www.magna-rx.com boldly took quotes from reputable websites and turned them on their head, out of context, in order to dupe consumers. For instance, the website misled consumers by quoting Web MD as saying, “*We know that men with bigger penises must be happier, more successful and have happier wives.*” A more complete quote from the Web MD article by urologist Dr. Sheldon Marks about supposed penis enlargement pills reads as follows, “Here's the kicker - there is **no truth or science** behind any one of them. They are all pure and simple scams, designed to separate out the foolish from their money. Nothing more than snake oil salesmen....And what better way to trick people than playing to the secret wish of many men - to have a bigger penis? Because, after all, *we know that men with bigger penises must be happier, more successful and have happier wives.* And who will complain that his penis enlargement pill didn't work? I would guess very few men.”¹ The www.magna-rx.com website similarly butchered the message of a CNN article, and referred to a U.S. News and World Report article that did not even exist.

27. The website www.aragonproducts.com is also an Affiliate Marketer that advertises, promotes, and sells Magna-Rx+. (This company also does business as American Lifestyles.) This website mirrors the fraudulent claims made on Magna's website www.magnarx.com. As recently as April 2010 (before this action was filed on behalf of Felipe Morales) it asserted in part that, “Pennis (sic) enhancement pills Magna RX WILL GIVE YOU: A thicker, longer and much more defined pennis (sic). Enhancement averages from 1 to 3 inches. In some cases, it could increase up to 5 inches. A longer, thicker pennis (sic) even in it's flaccid state. Because Magna-RX+ pills provides more blood flow to the pennis (sic), your pennis (sic) 'hangs' larger all day. A bigger, thicker and harder erections.” The website also falsely claimed that by using Magna-Rx+, “Now You Can Have a MASSIVE pennis!!! You can massively

¹ <http://blogs.webmd.com/mens-health-office/2008/04/penis-enlargement-myths-and-facts.html>

1 increase your pennis size in as little as 2 weeks. Best of all, there are no pumps,
 2 weights, pain, and especially no dangerous and expensive surgery involved.” The site
 3 continues to make these calims in a similar form.
 4 (<http://www.aragonproducts.com/theproducts.cfm?master=5294>). An accurate copy of
 5 the advertisement from this website as it appeared as recently as April 2010 is attached
 6 hereto as Exhibit 4.

7 28. Mr. Moidel has testified that this website, www.aragonproducts.com likely
 8 had a licensing or reselling agreement with Magna as recently as April 2010. Mr.
 9 Moidel further testified that all of the claims about Magna-Rx+ asserted on
 10 www.aragonproducts.com, outlined in the paragraph above, are false.

11 29. The website www.buyvivaxa.net is also a Magna-Rx+ Affiliate Marketer
 12 that as recently as April 2010 made false claims about Magna-Rx+ in order to drive
 13 sales. That website falsely asserted that, “Unlike surgeries, Magna RX is safe and pain
 14 free. Unlike a pump, Magna RX solves the problem with permanent results. So you'll be
 15 back to the way things were, except only better.” Mr. Moidel has testified that the
 16 statement that Magna RX has permanent results is absolutely false.
 17 (<http://www.buyvivaxa.net/magnarx.html>). An accurate copy of the advertisement from
 18 this website is attached hereto as Exhibit 5.

19 30. Still another Affiliate Marketer that as recently as April 2010 made false
 20 claims about Magna-Rx+ is <http://allnutri.com>. In an effort to sell Magna-Rx+, this
 21 website made false claims about the product that closely mirror those found on Magna's
 22 website, www.magnarx.com, outlined above. Specifically, the site claimed that Magna-
 23 Rx+ is, “THE WORLD’S MOST POPULAR MALE ENHANCEMENT PROGRAM.
 24 Maximize your growth, performance & strength with Magna RX+, this revolutionary
 25 penis enlargement breakthrough! The MAGNA-RX+ Penis Enlargement System is the
 26 easiest and quickest doctor-recommended way. Magna RX+ developed by Dr. Aguilar,
 27 a leading medical doctor and urologist, each MAGNA-RX+ tablet contains a unique,
 28

1 high performance male enhancement supplement designed to supercharge your sex life!
2 That's why it's the world's leading and most powerful penile enlargement system."
3 (<http://allnutri.com/pid9324/magna+rx.aspx>). An accurate copy of the advertisement
4 from this website is attached hereto as Exhibit 6.

5 31. Still another Affiliate Marketer that as recently as April 2010 made false
6 claims about Magna-Rx+ is www.vitasprings.com. In an effort to sell Magna-Rx+, this
7 website made false claims about the product that closely mirror those found on the
8 www.magnarx.com advertisement outlined above. Specifically, the site claimed that
9 "MAGNA-RX+ supplement for men is an easy and fast way to add massive, pulsating,
10 and explosive pure manhood to satisfy your lover like never before. - MAGNA-RX+:
11 THE WORLD'S TOP SELLING MALE ENHANCEMENT FORMULA."
12 (<http://www.vitasprings.com/magnarx-magna-rx.html>). An accurate copy of the
13 advertisement from this website is attached hereto as Exhibit 7.

14 32. Still another Affiliate Marketer that as recently as April 2010 made false
15 claims about Magna-Rx+ is www.1body4u.com. This website also made false claims
16 about Magna-Rx+ that closely mirror those found on the www.magnarx.com
17 advertisement outlined above, in order to drive sales. Specifically, the site claimed that,
18 "The MAGNA-RX+ Penis Enlargement System is the easiest and quickest doctor-
19 recommended way to add substantial growth of pure manhood to satisfy like never
20 before! MAGNA-RX+: THE WORLD'S #1 PENIS ENLARGEMENT FORMULA!
21 Developed by Dr. Aguilar, a leading medical doctor and urologist, each MAGNA-RX+
22 tablet contains a unique, high performance male enhancement supplement designed to
23 supercharge your sex life! That's why it's the world's leading and most powerful penile
24 enlargement system." (<http://www.1body4u.com/magnarx.php>). An accurate copy of
25 the advertisement from this website is attached hereto as Exhibit 8.

26 33. FTC guidelines require companies who advertise through affiliate
27 marketers, such as Magna, to actively monitor the claims of any affiliate marketers to
28

1 ensure that no false advertising claims are being made. Richard Cleland of the FTC has
 2 explained in no uncertain terms that, “(a)t a minimum, sellers should have a program to
 3 monitor what affiliates are saying about the products and take action against affiliates
 4 who are violating policy.”² Given the sheer scope of the affiliate marketing claims
 5 outlined above, it is evident that Magna has not fulfilled this responsibility.

6 34. Instead, affiliate marketers have served as an echo chamber of false claims
 7 asserted by Magna itself. Under this marketing scheme, both Magna and affiliate
 8 marketers have profited illicitly from sales driven by false claims. Affiliate marketers
 9 first echo Magna’s false claims, and then purchase Magna-Rx+ from Magna in order to
 10 fill orders induced by those fraudulent claims.

11 35. Both mail and wire fraud are central to the profits illicitly generated by
 12 Magna and Affiliate Marketers. Mail fraud is present because the fraudulently sold
 13 products are delivered through the mail, both to Affiliate Marketers as well as to duped
 14 consumers. Wire fraud is present because the illicit and fraudulent advertisements are
 15 predominantly disseminated through the internet. Furthermore, the fraudulent
 16 advertising material is communicated from Magna to Affiliate Marketers both through
 17 the mail and the internet, resulting in both mail fraud and wire fraud.

18 19 **V. CLASS ACTION ALLEGATIONS**

20 36. Plaintiffs bring this class action for damages and other monetary relief on
 21 behalf of the following class:

22 All persons located within the United States who purchased
 23 Magna-Rx+ for personal use at any time during the four years
 24 preceding the filing of this Complaint (the “Class”).

25
26
27 ² [http://www.amnavigator.com/blog/2009/11/30/ftc-on-guidelines-affiliate-disclosures-](http://www.amnavigator.com/blog/2009/11/30/ftc-on-guidelines-affiliate-disclosures-compliance/)
 28 [compliance/](http://www.amnavigator.com/blog/2009/11/30/ftc-on-guidelines-affiliate-disclosures-compliance/)

1 37. Excluded from the Class are governmental entities, Defendants, any entity
2 in which defendants have a controlling interest, and Defendants' officers, directors,
3 affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries,
4 and assigns. Also excluded from the Class is any judge, justice, or judicial officer
5 presiding over this matter and the members of their immediate families and judicial
6 staff.

7 38. The proposed Class is so numerous that individual joinder of all its
8 members is impracticable. Due to the nature of the trade and commerce involved,
9 however, Plaintiffs believe that the total number of Class members is at least in the tens
10 of thousands and members of the Class are numerous and geographically dispersed
11 across the United States. While the exact number and identities of the Class members
12 are unknown at this time, such information can be ascertained through appropriate
13 investigation and discovery. The disposition of the claims of the Class members in a
14 single class action will provide substantial benefits to all parties and to the Court.

15 39. There is a well-defined community of interest in the questions of law and
16 fact involved affecting the plaintiff class and these common questions predominate over
17 any questions that may affect individual Class members. Common questions of fact and
18 law include, but are not limited to, the following:

- 19 (a) Whether Defendants' efficacy claims are accurate;
 - 20 (b) Whether Defendants' efficacy claims are properly substantiated;
 - 21 (c) Whether Defendants have falsely represented that Magna-Rx+ has
22 benefits which it does not;
 - 23 (d) Whether Defendants knew that the efficacy representations were
24 false;
 - 25 (e) Whether Defendants entered into a conspiracy to falsely promote
26 Magna after knowing the preceding facts.
- 27
28

1 40. Plaintiffs' claims are typical of the claims of the members of the Class.
2 Plaintiffs and all members of the Class have been similarly affected by Defendants'
3 common course of conduct since they all relied on Defendants' representations
4 concerning Magna-Rx+ and purchased the product based on those representations.

5 41. Plaintiffs will fairly and adequately represent and protect the interests of
6 the Class. Plaintiffs have retained counsel with substantial experience in handling
7 complex class action litigation. Plaintiffs and their counsel are committed to vigorously
8 prosecuting this action on behalf of the Class and have the financial resources to do so.
9 Plaintiffs have retained counsel who are widely recognized as some of the most
10 successful and effective class action litigators in California, and whose victories have
11 been publicized on CNN, Fox News, MSNBC, and nearly every major California
12 newspaper. Plaintiffs' counsel has also been certified as lead class counsel in similar
13 class actions.

14 42. Plaintiffs and the members of the Class suffered, and will continue to
15 suffer, harm as a result of Defendants' unlawful and wrongful conduct. A class action
16 is superior to other available methods for the fair and efficient adjudication of the
17 present controversy. Individual joinder of all members of the class is impracticable.
18 Even if individual class members had the resources to pursue individual litigation, it
19 would be unduly burdensome to the courts in which the individual litigation would
20 proceed. Individual litigation magnifies the delay and expense to all parties in the court
21 system of resolving the controversies engendered by Defendants' common course of
22 conduct. The class action device allows a single court to provide the benefits of unitary
23 adjudication, judicial economy, and the fair and efficient handling of all class members'
24 claims in a single forum. The conduct of this action as a class action conserves the
25 resources of the parties and of the judicial system and protects the rights of the class
26 members. Furthermore, for many, if not most, a class action is the only feasible
27 mechanism that allows an opportunity for legal redress and justice.

28

43. Adjudication of individual class members' claims with respect to the Defendants would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication, and could substantially impair or impede the ability of other class members to protect their interests.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA LEGAL REMEDIES ACT

(By Plaintiffs and On Behalf of the Class as against All Defendants)

44. Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 43 above as if fully set forth herein.

45. Plaintiffs have standing to pursue this claim as Plaintiffs have suffered injury in fact and have lost money or property as a result of Defendants' actions as set forth herein. Specifically, prior to the filing of this action, Plaintiffs purchased Magna-Rx+ for their own personal use. In so doing, they reviewed, believed, and relied upon the preceding marketing claims. Plaintiffs have consumed Magna-Rx+ as directed, but the product has not worked as advertised, nor did they experience any of the promised benefits.

46. Plaintiffs have filed herewith the declaration of venue required by Civil Code Section 1780(d).

47. Defendants' wrongful business practices constituted, and constitute, a continuing course of conduct in violation of the California Consumer Legal Remedies Act since Defendants are still representing that Magna-Rx+ has characteristics and abilities which are false and misleading, and have injured Plaintiffs and the Class.

48. Counsel for Plaintiffs previously sought only to enjoin Defendants' false marketing and advertising claims and to prevent Defendants from continuing to engage in unlawful, unfair, or deceptive business practices and any other act prohibited by law, including those set forth in the complaint pursuant to California Civil Code Section

1 1780(a)(2). However, since Defendants did not agree to all of the above-referenced
2 demands, Plaintiffs now seek:

- 3 (a) actual damages pursuant to Civil Code Section 1780(a)(1);
- 4 (b) punitive damages pursuant to California Civil Code Section
5 1780(a)(4) due to the fraudulent, malicious, and willful nature of Defendants' conduct;
- 6 (c) statutory damages of no less than \$1,000 per class member pursuant
7 to California Civil Code Section 1780(a)(1);
- 8 (d) statutory damages of \$5,000 for each class member who is a senior
9 citizen as defined by California Civil Code Section 1761(f) or a disabled person as
10 defined by California Civil Code Section 1761(g) and who has suffered substantial
11 physical, emotional, or economic damages pursuant to California Civil Code Section
12 1780(b)(1); and
- 13 (e) any other equitable or legal relief that the Court deems proper
14 pursuant to California Civil Code Section 1780(a)(5).

15 16 **SECOND CAUSE OF ACTION**

17 **FRAUD**

18 **(By Plaintiffs and On Behalf of the Class as against All Defendants)**

19 49. Plaintiffs incorporate by this reference the allegations contained in
20 paragraphs 1 through 48 above as if fully set forth herein.

21 50. The Defendants' representations regarding the efficacy of Magna-Rx+
22 were false. Magna personally approved and disseminated the false claims and also was
23 aware that Affiliate Marketers mirrored Magna's own false claims in order to drive
24 sales, and have done so continuously during the class period.

25 51. As set forth in detail above, Magna knew that the efficacy representations
26 were false at the time they were made, yet continued to make them with the intent of
27 deceiving Plaintiffs and the Class.

1 52. Plaintiffs and the Class reasonably relied upon and believed Defendants'
2 false efficacy representations in deciding to purchase and use the product.

3 53. Plaintiffs and the Class have suffered actual damages by purchasing and
4 using a worthless product, Magna-Rx+, based upon Defendants' false efficacy claims.

5 54. Defendants made these false representations with the specific intent of
6 injuring and defrauding Plaintiffs and the Class, and did so with fraudulent intent and
7 malice. Therefore, Plaintiffs and the Class are also entitled to punitive damages against
8 Defendants.

9 **THIRD CAUSE OF ACTION**

10 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS**

11 **CODE SECTIONS 17200 ET SEQ.**

12 **(By Plaintiffs and On Behalf of the Class as against All Defendants)**

13 55. Plaintiffs incorporates by this reference the allegations contained in
14 paragraphs 1 through 54 above as if fully set forth herein.

15 56. As alleged hereinabove, Plaintiffs have standing to pursue this claim as
16 Plaintiffs have suffered injury in fact and have lost money or property as a result of
17 Defendants' actions as set forth herein. Specifically, prior to the filing of this action,
18 Plaintiffs purchased Magna-Rx+ for their own personal use. In so doing, they relied
19 upon the false representations referenced above. They have consumed Magna-Rx+, but
20 the product has not worked as advertised and was worthless.

21 57. Defendants' actions as alleged in this Complaint constitute an unfair or
22 deceptive business practice within the meaning of California Business and Professions
23 Code section 17200 in that Defendants' actions are unfair, unlawful, and fraudulent, and
24 because Defendants have made unfair, deceptive, untrue or misleading statements in
25 advertising media, including the Internet, within the meaning of California Business and
26 Professions Code sections 17500, et seq.

1 58. Defendants' business practices, as alleged herein, are unfair because they
2 offend established public policy and/or are immoral, unethical, oppressive,
3 unscrupulous and/or substantially injurious to consumers in that consumers are
4 potentially misled by the claims made with respect to Magna-Rx+ as set forth herein.

5 59. Defendants' business practices as alleged herein are unlawful because the
6 conduct constitutes false marketing and advertising and other causes of action alleged
7 herein.

8 60. Defendants' business practices as alleged herein are fraudulent because
9 they are likely to deceive customers into believing that Magna-Rx+ has properties that it
10 in fact does not have.

11 61. Defendants' wrongful business practices constituted, and constitute, a
12 continuing course of conduct of unfair competition since Defendants are marketing and
13 selling their products in a manner likely to deceive the public.

14 62. Defendants' wrongful business practices have caused injury to Plaintiff
15 and the Class.

16 63. Pursuant to section 17203 of the California Business and Professions Code,
17 Plaintiffs and the Class seek an order of this court enjoining Defendants from
18 continuing to engage in unlawful, unfair, or deceptive business practices and any other
19 act prohibited by law, including those set forth in the complaint. Plaintiffs and the
20 Class also seek an order requiring Defendants to make full restitution of all moneys it
21 wrongfully obtained from Plaintiffs and the Class.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

FOURTH CAUSE OF ACTION

**VIOLATION OF FEDERAL RACKETEER INFLUENCED
AND CORRUPT ORGANIZATIONS (RICO) ACT, 18 U.S.C. §§ 1961-1968
(By Plaintiffs and On Behalf of the Class as against Defendant Magna)**

64. Plaintiffs incorporate by this reference the allegations contained in paragraphs 1 through 63 above as if fully set forth herein.

65. As alleged hereinabove, Plaintiffs have standing to pursue this claim as Plaintiffs have suffered injury in fact and have lost money or property as a result of Defendants' actions as set forth herein. Specifically, prior to the filing of this action, Plaintiffs purchased Magna-Rx+ for their own personal use. In so doing, they relied upon the false representations referenced above. They have consumed Magna-Rx+, but the product has not worked as advertised and was worthless.

66. Defendant Magna and Affiliate Marketers form an enterprise under the RICO Act since together they form an association in fact ("the Enterprise"). The Enterprise consists of Magna as well as those Affiliate Marketers that fraudulently market and sell Magna-Rx+ and also sell at least one other kind of Magna product. The Enterprise certainly engages in and affects interstate commerce, since by its very nature it fraudulently sells Magna-Rx+ in interstate commerce.

67. Defendant Magna is the defendant person under 18 U.S.C. § 1962(c) of the RICO Act as it pertains to the Enterprise. This is because Magna conducts and participates in racketeering activity through the Enterprise. The Supreme Court, in *Reeves v. Ernst & Young*, 507 U.S. 170 (1993), has explained that "conduct or participate" under 18 U.S.C. § 1962(c) means "operate or manage."

68. Defendant Magna operates and manages the Enterprise in its racketeering activity. The racketeering activity includes both mail fraud and wire fraud.

69. Under the RICO Act, mail fraud is defined by 18 U.S.C. § 1341, which states in pertinent part:

1 “Whoever, having devised or intending to devise any scheme or artifice to
2 defraud, or for obtaining money or property by means of false or
3 fraudulent pretenses, representations, or promises...places in any post
4 office or authorized depository for mail matter, any matter or thing
5 whatever to be sent or delivered by the Postal Service, or ... to be sent or
6 delivered by any private or commercial interstate carrier, or takes or
7 receives therefrom, any such matter or thing...”

8 70. Defendant Magna operates and manages the racketeering activity of mail
9 fraud in the Enterprise because Affiliate Marketers mirror fraudulent claims originated
10 by Magna, and Magna sends Affiliate Marketers, through the mail, the Magna-Rx+
11 product to be sold in interstate commerce based on the fraudulent claims that Magna
12 originated and Defendant Affiliate Marketers have mirrored. Defendant Magna also
13 communicates the fraudulent claims that Affiliate Marketers mirror through the mail.

14 71. Under the RICO Act, wire fraud is defined by 18 U.S.C. § 1343, which
15 states in pertinent part:

16 “Whoever, having devised or intending to devise any scheme or artifice to
17 defraud, or for obtaining money or property by means of false or
18 fraudulent pretenses, representations, or promises, transmits or causes to be
19 transmitted by means of wire, radio, or television communication in
20 interstate or foreign commerce, any writings, signs, signals, pictures, or
21 sounds for the purpose of executing such scheme or artifice...”

22 72. Defendant Magna operates and manages the racketeering activity of wire
23 fraud in the Enterprise because Magna makes and has made fraudulent claims about
24 Magna-Rx+ on the internet to induce its sale in interstate commerce, and Affiliate
25 Marketers mirror the fraudulent claims originated by Magna (which are displayed and
26 communicated on the internet), also on the internet, so that they can sell Magna-Rx+ in
27 interstate commerce after buying it directly from Magna.
28

73. These racketeering practices constitute a pattern under the RICO Act since they are the normal business practices of the Enterprise and have been throughout the class period.

74. Plaintiffs and the Class seek all equitable and legal remedies available under the RICO Act.

PRAYER FOR RELIEF

Wherefore, Plaintiffs and members of the Class request that the Court enter an order or judgment against Defendants as follows:

1. Certification of the proposed classes and notice thereto to be paid by Defendants;
2. Adjudge and decree that Defendants have engaged in the conduct alleged herein;
3. For restitution and disgorgement on certain causes of action;
4. For an injunction ordering Defendants to cease and desist from engaging in the unfair, unlawful, and/or fraudulent practices alleged in the Complaint;
5. For compensatory, general, statutory, exemplary, and any other damages legally available according to proof on certain causes of action;
6. For both pre and post-judgment interest at the maximum allowable rate on any amounts awarded;
7. Costs of the proceedings herein;
8. Reasonable attorneys' fees as allowed by statute; and

///

///

///

///

///

1 9. Any and all such other and further relief that this Court may deem just and
2 proper.

3
4 Dated: July 1, 2010

NEWPORT TRIAL GROUP
A Professional Corporation
Scott J. Ferrell

6
7 By: /s/ Scott J. Ferrell
Scott J. Ferrell

8 Attorneys for Plaintiff and the Class
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil procedure Section 38(b), Plaintiffs and the Class demand a trial by jury on all issues so triable.

Dated: July 1, 2010

NEWPORT TRIAL GROUP
A Professional Corporation
Scott J. Ferrell

By: /s/ Scott J. Ferrell
Scott J. Ferrell

Attorneys for Plaintiff and the Class